

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 94-0749 ST
Sales and Use Tax
For the Period 1991 Through 1993

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

Sales and Use Tax – Installation and Integration of Audio Visual Equipment

Authority: 45 IAC 2.2-3-7; 45 IAC 2.2-3-12

The taxpayer protests the department's imposition of a sales/use tax assessment on the service portion of time and materials contracts for the installation and integration of audio/visual equipment.

STATEMENT OF FACTS

The taxpayer is incorporated under the laws of the State of Indiana, and maintains its headquarters in Indiana. The taxpayer is engaged in the sales, installation and service of audio/visual systems. These primarily include home entertainment systems, media centers, and whole house sound systems. In addition, the taxpayer installs sound systems for schools and other businesses. The majority of the taxpayer's work is done for customers having new homes built. A new home builder will refer their customer to the taxpayer when a home entertainment system is desired. The taxpayer then works directly with the customer in designing, supplying and installing the desired systems. These systems include items such as big screen televisions, home theatre systems, in ceiling or wall mounted speakers, wall mounted control switches and computer controlled command centers. The sale of the computer controlled command centers also involves the programming of the software, by the taxpayer so that the systems will perform the functions desired by the customer. The taxpayer bills their customers on a time and materials basis, breaking out the amounts charged for materials sold and labor charges. The taxpayer is a registered retail merchant, and has collected and remitted sales tax for the sale of materials listed in each invoice. No tax was collected for the labor portions of the contracts.

Sales and Use Tax – Installation and Integration of Audio Visual Equipment

DISCUSSION

The taxpayer protests the Department's imposition of sales/use tax on the labor portion of a time and materials contract for the installation and integration of audio/visual equipment. The taxpayer argues that it is a contractor pursuant to 45 IAC 2.2-3-7. The taxpayer also contends that the audio and visual components sold are either incorporated into the realty itself or are "stand alone" units which could be unplugged by the customer and removed. The taxpayer also states that the "stand alone" units are intended to become part of the realty because, should a "stand alone" unit be removed the entire audio/visual system would be destroyed. The taxpayer also argues that it may be classified as a service provider because it sells design and engineering services, wiring and switching installation services, software programming services, and custom construction installation services.

In order for the taxpayer to be deemed a contractor, the taxpayer would have to be engaged in converting construction material (tangible personal property) into realty pursuant to 45 IAC 2.2-3-7. The term contractor is defined in the above-cited regulation as, "... any person engaged in converting construction material into realty. The term 'contractor' refers to general or prime contractors, subcontractors, and specialty contractors, including but not limited to persons engaged in ... carpentry, ... electrical work, ... plastering," 45 IAC 2.2-3-7(b) defines construction material as, "any tangible personal property to be used for incorporation in or improvement of a facility or structure constituting or becoming part of the land on which such facility or structure is situated."

In support of its protest the taxpayer provided copies of contracts, affidavits, and photographs depicting its installations. Exhibits A, B & C of the affidavits are examples of typical contracts between the taxpayer and its customers. Several provisions of these contracts illustrate the nature of the taxpayer's work as providing improvements to real estate. For example, in the Introduction section, taxpayer provides that it will interface with the homeowner's general contractor and other tradespeople to provide technical specifications and mechanical design for building the audio/visual equipment into the realty itself. Second, each of these contracts describes an audio/visual system composed of numerous in-wall speaker systems and in-wall control systems, and incorporates into the system components previously owned by the customer. Third, as shown by the Exhibit B contract (see page 5), taxpayer wires portions of the realty for the future addition of audio/visual components. This aspect of the services provided by the taxpayer is particularly telling that the essence of its business is improving realty. Photographs are attached as Exhibits E, F & G to the affidavit and depict in-wall audio/visual components which were installed by the taxpayer in providing an integrated system. The components were intended to be and are a part of the realty itself. They cannot be removed without destroying the realty. The audio/visual system is as much a part of the realty as a window or a light fixture. The

photographs attached as Exhibit E depict in-wall television systems. The photograph attached as Exhibit F depicts an in-wall television projector. The photographs attached as Exhibit G depict in-wall speaker systems.

The first step is the initial consultation where the taxpayer develops understanding of the scope of the project, explore various design concepts based upon the customers needs, and a proposed budget. Second, the taxpayer produces an initial quote, contract, and system design specifications based upon concepts outlined during initial consultation. Third, the customer commits to the project, the contract is signed, and a deposit check is issued. Fourth, the taxpayer completes detailed design, schematics, system documentation and working drawings. Fifth, the taxpayer orders the necessary equipment for final installation (deposit is required prior to ordering equipment). Lastly, the equipment is delivered (payment is made) and installed, tested, calibrated, and optimized for the particular environment.

In addition, the work done by the taxpayer includes electrical wiring. The taxpayer wires the electronic components into an integrated system and then wires the system into the house itself. The taxpayer also completes wiring for future systems and additional areas around the home. The taxpayer also undertakes the cutting and finishing of drywall while installing components into the walls and ceilings. The taxpayer must then paint the drywall and woodwork after installation is completed. Finally, the taxpayer makes custom cabinets for the electronic components.

It is clear from the information provided by the taxpayer that in some instances, (i.e. new home construction) they are acting as a contractor. The tangible personal property is installed into the realty and becomes a part of the realty. The removal of these systems would obviously damage the home. The installation is undertaken after the transfer of the tangible personal property. The taxpayer as a contractor can use a time and materials contract and will be responsible for tax only on the materials portion of the contract, pursuant to 45 IAC 2.2-3-12.

In other instances, the taxpayer is acting as a retail merchant that delivers and installs tangible personal property. As such, the taxpayer is separately contracting for materials and labor. The taxpayer is correctly collecting and remitting sales tax on the materials portion of the contract.

FINDING

The taxpayer's protests is sustained.